

**OFFICE OF THE STATE ATTORNEY**  
**Eighth Judicial Circuit**

**INVESTIGATIVE SUMMARY**

December 12, 2011

RE: 01SAI-2011-52821

Complaint concerning the Alachua County Commission

The Office of the State Attorney received an initial complaint concerning activities and actions of the Alachua County Commission. The complainant made the following accusations:

Discussions took place at the December 7, 2010, Informal Meeting of the Alachua County Board of County Commissioners. The allegation is the discussion by board members resulted in what the complainant described as what called “the crystallization of the vote” on a budget issue involving the Alachua County Sheriff’s Office.

The complainant alleges that at the December 7, 2010, Special Called Meeting of the Alachua County Board of County Commissioners, the Chairman of the Commission possibly violated F.S. 838.022 on Official Misconduct. The complainant alleges the statements, as made by the Commission Chairman concerning the Sheriff’s Office budget was “deliberately evasive, as if he had something to hide.”

The complainant alleges that the Alachua County Board of County Commissioners failed to properly notice a board meeting in which part of the meeting dealt with an eminent domain litigation issue resulting in the board taking official action.

The complainant alleges that at the June 19, 2007, Informal Board Meeting of the Alachua County Board of County Commissioners, the board had discussions concerning the county gas tax that resulted in what the complainant describes as “crystallization of the vote” prior to a formal board meeting.

The complainant alleges that an October 3, 2006, Informal Meeting morphed into an Official Board Meeting and was a violation of law since the board had not formally noticed the public of the meeting.

The complainant also provided a citation of case law he describes as “crystallization of the vote” information pertinent to board discussion. The case law is cited was “Town of Palm Beach vs. Gradison”, 296 So.2<sup>d</sup> 473.

The complainant alleges that at the April 17, 2007, Informal Commission Meeting, members of the Alachua County Commission voted on an issue involving the Springhill Development proposal. The complainant alleges polling and crystallization of the voting was in violation of the Florida Sunshine Law.

Seven additional requests for investigation were made to our office by letter, package, or telephonically. In addition this office received emails from the media and a citizen making a public records request. Also collected as part of the archive were media articles written concerning the subject matter.

In their research, investigators obtained numerous documents, audio and video records for the investigation. The documents include meeting notices, meeting agendas, meeting minutes, audio and video recordings of Informal Commission Meetings, Regular Commission Board Meetings, Special Called Board Meetings, the Rules of Procedure for the Alachua County Board of County Commissioners, and case law cited by the complainant, "Town of Palm Beach vs. Gradison."

The materials were organized in relation to the allegations and indexed. All materials were reviewed numerous times in their entirety. It should be noted that some of the recordings were difficult to hear and understand due to extraneous noises taking place in the room

Once the materials were gathered and reviewed, Investigations contacted Pat Gleason, Assistant Attorney General and General Counsel for the Florida Attorney General's Office based in Tallahassee. Gleason has over three decades of knowledge and experience dealing with open government and public records issues in the State of Florida. She is considered a subject matter expert and is highly regarded in the field. Gleason regularly teaches on the subject throughout the state.

Gleason met with Investigations to review the documents, audio, and video recordings. Gleason provided her professional opinion as to whether any violations existed.

As to the Informal Meetings, Gleason believes there is no violation of law as to the discussions conducted by commissioners. She noted the meetings were properly noticed and conducted as defined in Number 7 of the Commission's Rules of Procedure. The meetings were open to the public. As to the issue the complainant's allegation that there was a "crystallization of the vote", Gleason stated there is no prohibition for a commissioner to express a position on a matter in a noticed public meeting, nor ask questions of another commissioner in the meeting. As to the case law cited by the complainant, "Town of Palm Beach vs. Gradison," Gleason believes there is no application of this case law in this matter as this case involved an advisory committee who were not meeting in public, nor were minutes taken.

Gleason also reviewed the complainant's allegation that the Board of County Commissioners did not properly notice an October 3, 2006 meeting. It should be noted the Commission had issued a public notice of an Informal Meeting for that date and time. Between the time of the notice and the Informal meeting, the County Attorney stated he needed a commission decision on a litigation matter involving eminent domain. During the meeting time, the Commission Chairman declared they were going to be meeting officially to tend to the matter. Once the litigation matter was decided, the board moved into the Informal Meeting process. The position of the County Attorney was that the meeting had been noticed to the public and believes that to be legally sufficient. Gleason stated she did not know of any specific case law dealing with this circumstance. In addition Gleason stated the statute of limitations would have already run if an allegation would have been substantiated. Gleason suggested if an urgent matter needed to be presented to the Commission, their Rules of Procedure provide additional options for notification such as Special Called and Emergency Commission meetings. Following the meeting with Gleason, Investigations contacted the County Attorney to discuss the additional options. Mr. Wagner stated the Board of County Commissioners recently adopted an addendum to the Informal Meeting process which will make modifications to the title of the meeting and add an agenda. Wagner believes this remedy will resolve the issue.

In addition Gleason also reviewed the December 7, 2010, Special Board Meeting concerning the complainant allegation that the Board Chairman violated F.S. 838.022. Gleason stated she saw no violation and that F.S. 838.022 centers on the destruction and concealment of official records and not necessarily how a person communicated with other parties in an official meeting.

If you have further questions concerning the investigation, I am available at your convenience to discuss them.

Submitted

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Spencer J. Mann  
Chief Investigator